

S/N 10/087,523

PATENT

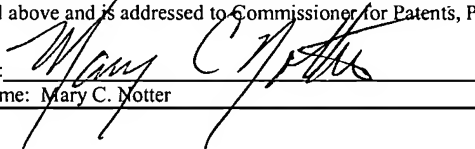
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Robert D. Klein Examiner: Leffers Jr, Gerald G
Serial No.: 10/087,523 Group Art 1636
Unit:
Filed: February 28, 2002 Docket No.: MES-01-CON2/40338.72USC2
Title: Methods Of Creating Constructs Useful For Introducing Sequences Into Embryonic Stem Cells

CERTIFICATE UNDER 37 CFR 1.10

'Express Mail' mailing label number: EV199952722US
Date of Deposit: December 1, 2004

I hereby certify that this paper or fee is being deposited with the United States Postal Service 'Express Mail Post Office To Addressee' service under 37 CFR 1.10 on the date indicated above and is addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: 
Name: Mary C. Notter

TERMINAL DISCLAIMER TO OBVIATE A PROVISIONAL
DOUBLE PATENTING REJECTION OVER A PENDING SECOND APPLICATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450



Dear Sir:

Petitioner, Deltagen, Inc., a corporation organized and existing under the laws of the State of Delaware and having its primary place of business at 1031 Bing Street, San Carlos, CA 94070 represents that it is the owner of the entire right, title and interest in U.S. Patent Application Serial No. 10/087,523, filed on February 28, 2002 and entitled Methods Of Creating Constructs Useful For Introducing Sequences Into Embryonic Stem Cells ("present application"), by virtue of the assignment recorded at Reel 9749, Frame 0379.

Petitioner, Deltagen, Inc., hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the above-identified application, which would extend beyond the expiration date of the full statutory term as shortened by any terminal disclaimer filed prior to the grant of any patent granted from pending second U.S. Patent Application Serial No. 09/885,816, filed on June 19, 2001, and entitled Methods of Creating Constructs Useful for Introducing Sequences into Embryonic Stem Cells (“second application”) and hereby agrees that any patent so granted on the present application shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to any patent granted on the second application, this agreement to run with any patent granted on the present application and to be binding upon the grantee, its successors, or assigns.

In making the above disclaimer, Petitioner does not disclaim the terminal part of any patent granted on the present application that would extend to the full statutory term as shortened by any terminal disclaimer filed prior to the patent grant on the second application, in the event that any such issued patent: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321(a), has all claims cancelled by a reexamination certification, or is otherwise terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer, except for the separation of legal title stated above.

For submissions on behalf of an organization (e.g. corporation, partnership, university, government agency, etc.), the undersigned (whose title is supplied below) is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

12-1-04
Date

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